



Price adjustment clauses in a world of market volatility and inflation

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What are we covering today:

- Why do market volatility and inflation matter?
- When do they matter?
- How can the risk be managed?
- Using JCT DB 2016, NEC4 and FIDIC 2017 as our examples



Why does it matter?

A “neutral issue” that has the potential to impact massively the financial risk assumed by one or other party to a contract

No party obviously best placed to manage that risk

Requires careful consideration and implementation of appropriate measures for the project in question



When does it matter? Supply side

Your risk if you are providing fixed prices, or you have a target cost.

It could also impact on any bespoke payments eg incentive regimes.



When does it matter? Procuring side

The reverse of the above!

BUT remember the Construction Playbook exhortations:

- Contracts should be profitable and provide a fair return
- Asking for fixed prices may not achieve that and have unintended consequences

Playbook requires the inclusion of “appropriate indexation” where not addressed through the pricing mechanism



How can it be managed? Practicalities

Work together to see how far risk can be mitigated out eg

- Early ordering of goods/materials and equipment and laying down in storage areas?
- Advance manufacturing slots?

But unlikely to be able to remove the risk all together



How can it be managed? JCT tools

Taking JCT DB 2016 as our example.

- Possible to use “Fluctuations” mechanisms. A variety are possible. Requires appropriate entries in Contract Particulars
- Provisional Sums?



How can it be managed? NEC4 tools

Option X1: careful consideration of whether this suits and completion of Contract Data accordingly.

No “Provisional Sums” or “Fluctuations” mechanisms



How can it be managed? FIDIC tools

Clause 13.7 allows for adjustment for inflation if the Schedule of cost indexation is included.

Clause 13.4 allows for use of Provisional Sums



International Federation of
Consulting Engineers (FIDIC)

How can it be managed? Other issues

Remember also to consider the impact of inflation on bespoke payment arrangements including incentives

Keep it simple!



How can it be managed? Other issues

Relevance of “frustration” type clauses?

And force majeure?



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Conclusion

- No “one size fits all”
- Invest time in planning and implementing measures to mitigate the risk
- Use appropriate contract tools to deal with the remaining risk



Thank you.



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